

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE MIDDLE PENNSYLVANIA

KENNY JACOBS, :  
Petitioner :  
vs. : 1:Cr-01-139  
UNITED STATES OF AMERICA : Hon: Yvette Kane  
Respondent :

FILED  
WILLIAMSPORT, PA

JUN 24 2005

MARY E. D'ANDREA, CLERK  
Per \_\_\_\_\_  
DEPUTY CLERK

MOTION FOR 'CITATION OF AUTHORITY' PURSUANT  
TO RULE 28(j), TO FORTHWITH RECALL ,  
AND CORRECT THE 132 MONTHS SENTENCE  
MANDATE OF THIS COURT, IMPOSED 04-22-2002,  
IN SUPPORT THEREOF; THE U.S. SUPREME  
COURT JUSTICES DECISION 5-4, ON 1-12-2005,  
@: BOOKER.

TO THE HONORABLE YVETTE KANE, JUDGE OF THE SAID COURT:

Petitioner brings this court attention to the recent decision by  
The U.S. Supreme Court in BLAKELY vs. WASHINGTON, 2004 WL 1402697,  
BOOKER, 04-104, and FANFAN, 04-105 ( decided 01-12-2005 respectively).  
Pursuant to the federal rule of appellate procedure 28(j) , as this  
recent case authority was not available at the time petitioner's  
132 months sentence was imposed on 04-22-2002, before the honorable  
Yvette Kane.

In support thereof BOOKER, FANFAN, AND BLAKELY The Supreme Court  
overturned a sentence enhancement that was not based on facts admitted  
in the petitioner's guilty plea. Although the BLAKELY, AND BOOKER  
holding reversed a state court decision, the decision was based on  
the principles of Constitutional Sixth Amendment and is applicable

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to federal cases as well. Specifically, The Supreme Court in BLAKELY said that each and every sentence enhancement that requires a finding of fact must be proven to a jury beyond a reasonable doubt. In other words, the maximum sentence a judge can impose must be based on facts reflected in the jury verdict or admitted by the petitioner. As BLAKELY'S dissenting opinions recognized with the new supreme court's ruling of 01-12-2005 that there is no constitutionally significant distinction between the guidelines and the Washington procedure at issue in that case, likewise in this litigating case at hand for petitioner, same did occurred as in BLAKELY, AND BOOKER.

However, here this district court improperly miscalculated petitioner base offense level from 32 to 40 (as erroneously calculated in the PSI of this case matter, whereby, Base Offense level of 32 is justify and constitutionally, pursuant to Drug Table, §2D1.1 : 0: Level 32: 'AT LEAST 5KG BUT LESS THAN 15KG OF COCAINE (or the equivalent amount of other Schedule 1 or 11 ) ), whereas, the Plea agreement jointly admitted by the Government and the petitioner, signed 11-08-01, filed in this court 11-16-2001 " stipulates: A Violation Of Title 21, USC §846, Criminal Conspiracy to Distribute and Possess With Intent To Distribute 5 kilos and more Of Cocaine Base, a/k/a "crack," and a quantity of marijuana. " 2. This Court improperly enhanced petitioner's with 2 points, 0: PSI, 'Special Offense Characteristics: Because a firearm was possessed, two levels are added. Because, this court believed it found clear and convincing evidence that petitioner's is involved in the distribution, therefore, it enhanced petitioner's sentence with 45-62 months from 132 months from constitutionally

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authorized sentence to 70-87 months ( upon deduction of the three(3) points for acceptance of responsibility, takes the Offense level to 27 constitutionally justified, carrying the 70-87 months of imprisonment terms ) pursuant to section 3C1.1 of the federal sentencing guidelines. Pursuant to BLAKELY petitioner's sentence should not have been boosted unconstitutionally because of the underlying facts for the district court's determination that petitioner's involvement in the Criminal conspiracy to distribute and possess with intent to distribute 5 kilos and more of Cocaine and Cocaine base, when petitioner was never involved were neither presented to the jury, not found to be proven beyond a reasonable doubt; SEE: BLAKELY, @: 77, n. 111.

To wit, Your Honorable Yvette Kane, The Plea Agreement of this case matter was concurred to and sealed at sentencing promised of 70-87 months only ( due to the 5 kilos Cocaine and Cocaine base involved) to the petitioner by the defense counsel then advised ( Dennis E. Boyle Esq, 3rd Street, 18th floor, P.O.BOX. 840, Harrisburg, PA. 17108-0840 ), The Government representative Christy Fawlett, AUSA, and The Court ( Please review the Plea Agreement transcripts of this styled case matter entered November 16, 2001, to 5 kilos and more Of Cocaine and Cocaine Base aka "crack" in violation of 21 USC§846, before your honorable Yvette Kane, which was admitted by the petitioner at Offense level 27, Cr. History One(1), 70-87 months. But, however, at sentencing hearing 04-22-2002, petitioner was sentenced to 132 months which was erroneously enhanced by 45-62 months making petitioner

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to be unconstitutionally inflicted with 132 months imprisonment which violated petitioner's Sixth Amendment rights; Your Honorable Yvette Kane, This court erroneously sentenced petitioner to 132 months in lieu of 70-87 months, Your Honor, this court should have imposed, based on the facts proven to the petitioner or to the jury beyond a reasonable doubt, hence, the defense counsel as at the time, lack interest in this case matter.

Furthermore, the 62 months unjust enhancements was never stipulated in the petitioner's case indictment; perhaps, petitioner foreshadowed by The U.S. Supreme court opinions in BOOKER, FANFAN, SUPPORTED WITH JONES vs. USA, 526 U.S. 227 (1999), construing a federal statute. The fourteenth(14) Amendment commands the same answer in this case involving 62 MONTHS unjustly enhancing petitioner's from constitutional complied sentence of 70-87 months ( @; Level 27 ) to 132 months.

Annexed hereto, petitioner submits in application that: "here this court improperly enhanced his imprisonment terms with 62 months. Based on the new supreme court ruling in the BLAKELY, BOOKER, FANFAN case, also holds petitioner's defense counsel ineffective under the Sixth Amend. to effective assistance, in which; the Sixth Amend. require. Petitioner's then defense counse Dennis E. Boyle were, in fact, ineffective to allow this court to make such violation, by not providing an adequate defense on behalf of his client (petitioner), and for his best interest during the dur process; counsel Dennis E. Boyle Esq failed to challenge such violation of petitioner's

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constitutional right of the Sixth Amend. to jury's determination. And / or failed to request and provide an adequate defense at an evidential hearing, to do the APPRENDI ruling, for sentencing purposes.

Based upon the supreme court ruling in BLAKELY, APPRENDI vs. NEW JERSEY, 530 U.S. 466, 490 (2000), BOOKER, 04-104, FANFAN, 04-105 cases on same violation of the petitioner Sixth Amend. to jury's determination. The question in the justices' order and opinions were: "What to do at a time like this, when trial is over and there isn't any jury to determine any enhnacements for the Base Offense Level on the Cocaine and Cocaine base drug amount ? " Your Honorable Yvette Kane shall forthwith took the position of a jury, by determining the preponderance of the prosecuting evidence, crime gravity, the 45-62 months enhancements, and the counts, in which, the petitioner pled guilty to, thus; were still inflicted with enhancement of 45-62 months. Such determination by the judge's boosted the petitioner sentence, applying the maximum of 132 months in light of, this court judge's determination and APPRENDI, BOOKER, FANFAN, and BLAKELY.

#### CONCLUSION

Given The Supreme court's recent decision in BOOKER, FANFAN, and BLAKELY, petitioner's 132 months sentence should be forthwith vacated, reversed, constitutionally rectified, and the case should be scheduled for resentencing, because the jury never determined petitioner's ( 2 points enhancement due to Special Offense Characteristic, for a firearm ) or obstruction of justice never took place or impeded the administration of Justice.

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WHEREFORE, PETITIONER PRAYS THROUGH THIS COURT TO FORTHWITH GRANT HIM  
A NEW HEARING FOR THE PURPOSE OF RESENTENCING INTO LOWER TERM OF IMPRISON-  
MENT 70-87 MONTHS AS CONSTITUTIONALLY DEEMED APPROPRIATE AND JUST BY  
THIS COURT.

JUNE 22, 2005

RESPECTFULLY SUBMITTED

A handwritten signature in cursive script, appearing to read "Benny Jacobs".

JACOBS, KENNY 10663-067/pro-se

FCI-LORETTO, P.O.BOX. 1000,

LORETTO, PA. 15940

CERTIFICATE OF SERVICE

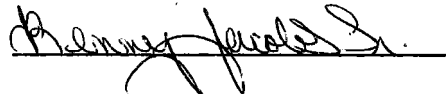
This is to certify that the undersigned has this date served the foregoing Motion upon all parties to this cause by depositing a copy, in the certified U.S.Mail, addressed to the following:-

Hon. Yvette Kane,  
U.S.D.Court Middle PA.,  
240 W. Third Street,  
Williamsport, PA. 17701  
cert# 70041160000717153887

The Court Clerk,  
U.S.D.Court Middle Pennsylvania,  
240 W. Third Street,  
Williamsport, PA. 17701  
cert#70041160000717153863

Christy Fawlett, AUSA  
Middle Pennsylvania District,  
P.O.Box 11754, Room 218  
Fed. BLDG.,  
Harrisburg, PA. 17108

June 22, 2005



JACOBS, KENNY  
Pro-se / 10663-067  
FCI, P.O.BOX. 1000,  
LORETTO, PA. 15940